

Message Text

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ACTION L-03

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FM AMEMBASSY BOGOTA

TO USIA WASHDC

SECSTATE WASHDC 7993

INFO DEPT JUSTICE WASHDC

UNCLAS BOGOTA 10668

USIAC

USIA FOR: ILA CHATTEN

STATE FOR: LEGAL ADVISOR

DEPT JUSTICE FOR: CIVIL DIV. FOR FOREIGN LITIGATION

E.O. 11652: N/A

SUBJ: BNC MEDELLIN LITIGATION

REF: BOGOTA 9418, 10445

1. ACCORDING TO OUR LATEST INFORMATION, DUARTE CASE IS ONLY IN PRELIMINARY PHASE OF COURT TESTIMONY. TO DATE BNC DIRECTOR MARY SMITH HAS NEITHER BEEN CALLED FOR TESTIMONY IN COURT NOR ASKED TO MAKE DEPOSITION IN CONSULATE AS OFFERED IN EMBASSY NOTES TO MINISTRY OF EXTERNAL AFFAIRS AND FORWARDED, ACCORDING TO MINISTRY, TO JUDGE OF LABOR COURT. IT IS CONCEIVABLE, OF COURSE, THAT MS. SMITH MAY NOT BE ASKED TO APPEAR IN COURT; WE HOPE THAT JUDGE WILL TAKE ADVANTAGE OF DEPOSITION OPTION.

IN FORWARDING EMBASSY NOTES, MINEXTAFF HAS LARGELY LIMITED ITSELF TO PRESENTATION OF EMBASSY POSITION CLAIMING DIPLOMATIC IMMUNITY FOR MS. SMITH AND HAS SEEMINGLY LEFT IT UP TO THE JUDGE TO DECIDE WHETHER IMMUNITY SHOULD BE GRANTED BY THE COURT.

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2. BNC COUNSEL ADVISES US, HOWEVER, THAT SHOULD JUDGE DECIDE

MS. SMITH'S TESTIMONY IN COURT IS DESIRED AND SHOULD USG THEN MAINTAIN ITS PRESENT POSITION THAT DIPLOMATIC IMMUNITY CANNOT BE WAIVED FOR SMITH APPEARANCE IN COURT, IT IS PRACTICALLY PREDICTABLE THAT THERE WILL BE "AUTOMATIC" JUDGEMENT AGAINST THE BNC AND IN FAVOR OF THE PLAINTIFF.

3. TO PREPARE FOR CONTINGENCY OF JUDGE'S REQUEST FOR SMITH TESTIMONY IN COURT, REQUEST DEPARTMENT APPROVAL FOR EMBASSY, ONLY IN EVENT JUDGE ASKS, TO AGREE TO WAIVE SMITH'S IMMUNITY IN THIS SPECIFIC CASE. MS. SMITH WOULD LIKE TO TESTIFY; BNC COUNSEL ALSO DESIRES TESTIMONY IN COURT TO REINFORCE WHAT WE BELIEVE IS GOOD BNC CASE; EMBASSY COUNSEL AGREES.

4. BY COOPERATING TO THIS LIMITED EXTENT, THERE WOULD APPEAR TO BE FAR GREATER PROBABILITY OF AVERTING ADVERSE RULING AND LIKELY PROTRACTED APPEALS ROUTE WITH UNPREDICTABLE OUTCOME. JUDGEMENT AGAINST THE BNC NOT ONLY WOULD BE COSTLY, BUT WOULD SET MOST UNDESIRABLE PRECEDENT IN ITS IMPLICATIONS OF WHOLE NETWORK OF BNCS IN COLOMBIA AND OTHER COUNTRIES OF AREA.
GILMORE

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